

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 05-00116-01-CR-W-HFS
)	
TYLER M. LEACH,)	
a/k/a "Husker622,")	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Todd P. Graves, United States Attorney, and Cynthia L. Phillips, Assistant United States Attorney, and the defendant, **TYLER M. LEACH** ("the defendant"), represented by Steve Moss, Assistant Federal Public Defender.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count One of the Indictment charging him with a violation of 18 U.S.C. § 2422(b), that is, knowingly using a facility of interstate commerce to attempt to persuade, induce, and entice an

individual who had not attained the age of 18 years to engage in sexual activity for which the defendant could be charged with a criminal offense, that is, the following felonies proscribed by the statutes of the State of Missouri: statutory rape in the first degree (Mo. St. 566.032); statutory rape in the second degree (Mo. St. 566.034); statutory sodomy in the first degree (Mo. St. 566.062); and statutory sodomy in the second degree (Mo. St. 566.064). By entering into this plea agreement, the defendant admits that he knowingly committed this offense, and is in fact guilty of this offense.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offense to which he is pleading guilty are as follows:

On March 8, 2005, **TYLER M. LEACH**, using his Dell Dimension 4700 computer, accessed the Internet and signed into American Online (AOL) chatroom, “take dau to park” under his screenname, “Husker622.” **LEACH** initiated conversation with “blondswtp90” by sending a private instant message. All American Online servers are located outside the state of Missouri.

“Blondswtp90” was the undercover identity of FBI Task Force Officer (TFO) Angie Wilson, acting undercover as a 14-year-old female named “Amber” from Kansas City, Missouri, from the Cyber Crimes Task Force Office located in the Western District of Missouri.

During the conversation, “Husker662” asked several questions regarding “blondswtp90's” experience with different sexual acts. “Blondswtp90” told him she was “not very experienced” and “behind” because some of her friends had “done a lot more than she had.” “Husker662” stated he lived in Lawrence, Kansas, and asked if she would like him to come see her and “catch her up on her sex life.”

On March 9, 2005, "Husker662" contacted TFO Wilson's undercover identity "blondswtp90" via instant message again. "Husker662" stated that his first name was "Tyler" and that he attended Johnson County Community College on Tuesdays and Thursdays and got out of his class at 3:15 p.m. He asked "blondswtp90" about her parents work schedules and when they got home from work. "Husker662" made arrangements to travel to her Kansas City, Missouri home to engage in sex after his classes at Johnson County Community College the next day, March 10, 2005.

On March 9, 2005, TFO Wilson sent an administrative subpoena to AOL. AOL provided the following information on "Husker662":

Name:	Michael Leach
Address:	4914 Stoneback Place
City:	Lawrence
State:	Kansas
Screen name:	husker662
Billing:	Visa, Michael Leach
Last session:	03-09-05 14:33 as husker662
Member since:	02-28-05
Account:	Active

AOL also provided Internet connection logs. The logs show "husker662" signing on seven times on March 8, 2005.

On March 9, 2005, TFO Brian Houlahan contacted Doug Oyer, Crime Prevention Officer with Johnson County Community College. TFO Houlahan provided Oyer the information given to TFO Wilson by "Husker662." Oyer was able to determine there was currently a **TYLER LEACH**, social security number 506-13-7618, date of birth November 29, 1981, registered in a Tuesday and Thursday class that lets out at 3:15 p.m. who has a Lawrence, Kansas address.

On March 9, 2005, **LEACH** sent an email to "blondswtp90" stating the following:

“Hey “Amber”, we’re still on for Thursday. Wear something cute & sexy for me. Put on a nice bra and sexy panties, maybe a skirt or something to show off your assistant. I want you to look hot. Make sure you smell good too. I’ll see you around 4 babe.”

On March 10, 2005, **LEACH** arrived to the Kansas City, Missouri address provided to him by “Amber.” Upon arriving at the undercover location, **LEACH** was placed under arrest.

LEACH signed an “Advice of Rights” form and consented to an interview. During the interview, **LEACH** provided the following information through his statements:

a. He met who he believed was a 14-year-old female named “Amber” who resided in Kansas City, Missouri, in an AOL chatroom on Tuesday, March 8, 2005. They discussed sex and **LEACH** offered to help her catch up on sexual acts that her friends had already done.

b. On March 9, 2005, **LEACH** told “Amber” he attended Johnson County Community College and could come over after his class. They planned on having vaginal sex and “Amber” was going to perform oral sex on **LEACH**. **LEACH** stated he discussed anal sex, but he did not plan on doing it. On this date he also received a picture of “Amber”. He stated “Amber” appeared to be 14-years-old and he believed that she was 14-years-old.

c. On March 10, 2005, **LEACH** traveled to “Amber”’s address. On the way he stopped at a convenient store and purchased baby oil for lubrication. He brought with him the baby oil, condoms, and beer.

d. **LEACH** stated he has searched the Internet for pornography and has viewed child pornography. He also stated he received adult and child pornography from various email lists he got on during AOL chats.

e. **LEACH** stated he is currently on bond for a case out of Topeka, Kansas. In November 2003, Leach met a 13-year-old female in a chatroom. They discussed sex and he traveled to Topeka, Kansas, on three occasions to meet with her. On only one occasion, the 13-year-old female was going to perform oral sex on him when they were interrupted by the family dog. In March 2004, a search warrant was executed at his father’s house. At this time they took his computer. **LEACH** was charged with Aggravated Criminal Sodomy. In February 2005, he plead to Attempted Aggravated Criminal Sodomy. His sentencing was scheduled for the following month. **LEACH** admitted he was aware he broke bond conditions placed on him by chatting on the computer with underage females and traveling to meet an underage female for sex.

f. **LEACH** stated he has actively been communicating with other minor females and discussed sex, but has not made any plans to meet them.

LEACH signed a “Consent to Search” form for his 1988 Mercedes that he used to drive to the undercover location. In the vehicle miscellaneous papers were located which included:

1. A list of websites. Many of these websites have titles which indicate an interest in underage females (littlevirginz, sweettennbodies, teendefloration). Leach stated he visited these websites.
2. Screen names and information about individuals. Two of these were 12-year-old females Leach met online.
3. Information about “blondswtp90” including her name, height, age, address, notes as to the online conversations, and directions to residence.

A forensics examination conducted by the Heart of America Regional Computer Forensics Lab located the text of the chats between the undercover TFO’s screen name, “blondswtp90” and the defendant’s screenname, “Husker622.”

4. Use of Factual Admissions. The defendant acknowledges, understands, and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines (“U.S.S.G.”), including the calculation of the defendant’s offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands, and agrees that the conduct charged in any dismissed counts of the Indictment as well as all other uncharged related criminal activity may be considered as “relevant conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charge to which he is pleading guilty.

5. **Statutory Penalties.** The defendant understands that upon his plea of guilty to Count One of the Indictment charging him with knowingly using a facility of interstate commerce to attempt to persuade, induce, and entice an individual who had not attained the age of 18 years to engage in sexual activity for which the defendant could be charged with a criminal offense, the minimum penalty the Court may impose is not less than 5 years of imprisonment. Pursuant to 18 U.S.C. § 2426(a) because the said offense occurred after the defendant had a prior sex offense conviction, the maximum penalty the Court may impose is not more than 60 years of imprisonment, a \$250,000 fine, any term of years or a life of supervised release, and a \$100 mandatory special assessment which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class B felony.

6. **Sentencing Procedures.** The defendant acknowledges, understands, and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of any term of years or life as required by 18 U.S.C. 3583(k) years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;

d. if the defendant violates a condition of his supervised release, the court may revoke his supervised release and impose an additional period of imprisonment of up to three years, without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court may

also impose a new period of supervised release, for any term of years or life, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;

e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

f. any sentence of imprisonment imposed by the Court will not allow for parole;

g. the Court may order restitution to be paid to victims of the offense to which he is pleading guilty, the conduct charged in any dismissed counts of the information, and all other uncharged related criminal activity;

h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

i. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. **Government's Agreements.** Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against defendant for any federal criminal offenses related to knowingly publishing a notice and advertisement offering to exchange, produce, display, distribute, and reproduce visual depictions, and the production of such visual depictions involved the use of minors engaged in sexually explicit conduct and such advertised visual depictions were of such conduct for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts Two and Three at sentencing.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence

against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of

this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. the Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. the applicable Guidelines Manual is the one that took effect on November 5, 2004.

c. the applicable Guidelines section for the offense of conviction is U.S.S.G. § 2G1.3 (Travel to Engage in Prohibited Sexual Conduct with a Minor);

d. the base level offense is 24 pursuant to U.S.S.G. § 2G1.3(a);

The following enhancement applies pursuant to U.S.S.G. § 2G2.2(b) Specific Offense Characteristics:

(b)(3)(A) The offense involved the use of a computer to persuade, induce, entice, and coerce the minor to engage in prohibited sexual conduct, thus there is a two level increase.

e. the defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources

efficiently. Therefore, he is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect;

f. there is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

g. the defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

h. the United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not “unreasonable”;

i. the defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant’s sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the information. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

j. the defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its

subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Information;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;

- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf; and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

- a. The defendant acknowledges, understands, and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.
- b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, that is, sentencing error more serious than a misapplication of the Sentencing Guidelines or an abuse of discretion. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

17. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

18. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules

of Evidence, Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

19. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

20. No Undisclosed Terms. The United States and defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

21. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any

drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Todd P. Graves
United States Attorney

Dated _____

By _____
Cynthia Phillips
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the Information. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated _____

Tyler M. Leach
Defendant

I am defendant **Tyler M. Leach's** attorney. I have fully explained to him his rights with respect to the offense charged in the Information. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, **Tyler M. Leach's** decision to enter into this plea agreement is an informed and voluntary one.

Dated _____

Steve Moss
Attorney for Defendant

CLP/art